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Newmont Mining Corporation
1700 Lincoln Street
Denver, CO 80203
Phone 303.853.7414
Facsimile 303.837.5837
www.newmont.com

April 19, 2007

Ms. Pamela Creedon
Executive Officer
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114

Dear Ms. Creedon:

Last month, Newmont, in the course of litigation, received from the City of Grass Valley ("City") a copy of a letter sent by the City to the Regional Water Quality Control Board ("Board") in early December 2006, in which the City argues that Newmont is responsible for the Drew Tunnel drainage. The City, in its letter, makes several inaccurate and misleading statements; thus Newmont asks you to consider the following response to the City's letter. Copies of cited documents are attached to this letter.

As the Regional Board is aware, the City of Grass Valley owns and operates a Wastewater Treatment Plant ("WWTP") along Allison Ranch Road, in Grass Valley, California. The WWTP sits on two parcels of land, purchased by the City in 1949 and 1972, respectively. The first parcel, on the east side of Wolf Creek, was purchased by the City from Empire Star Mines Company, Limited ("Empire Star") to construct its WWTP ("east parcel"). In 1972, the City purchased the remainder of the Property, on the west side of Wolf Creek, from the Boyce Thompson Institute of Plant Research, for expanding the WWTP ("west parcel"). The Drew Tunnel drainage is located on the west parcel.

In February 2000, the City notified that Regional Board that, during excavation activities relating to the expansion of the WWTP, the City encountered a drainage that it determined to be emanating from an abandoned mine tunnel. While the City has stated to Newmont, the Board and a federal court that it did not know of the Drew Tunnel until 2000, in fact, the City was aware that the Drew Tunnel discharge was mining-related as early as 1998.¹ In 1998, the City began the design phase for the WWTP expansion. In July 1998, the City and its consultant "investigated" the Drew Tunnel by poking a pvc pipe in the opening, to determine the size and

¹ The City admits to knowing about the drainage itself for "decades." (2/24/00 EcoLogic Memorandum) Further, as the Regional Board knows, the City was well aware of the presence of numerous mining features onsite, including the "Lower Seep" that was discovered and abandoned in 1993, mill sands that were discovered in 1993 and 1998, and mining foundations located only yards from the Drew Tunnel Portal.

shape of the "cavern." The City, in 1998, referred to the Drew Tunnel as a "mine vent shaft" and an "existing mine drainage." (July 9, 1998 Notes of Jeffrey Hauser; July 30, 1998 Eco:Logic Meeting Memorandum; Hauser Dep. at 24:24-25, 28:25 – 29:5) The City's design engineer, Jeffrey Hauser, recommended the City do further investigations to determine its origin and characteristics before going forward with construction plans, but the City refused. (Hauser Dep. at 24:24-25, 28:25 – 29:5.) The City also did not report the drainage to the Board at this time or try to work with the Board pre-construction on the regulatory considerations and options. This would have allowed the City to consider other design options and alternatives to its construction plans, such that the ensuing events and regulatory triggers could have been avoided.

As the City states in its letter to the Board, investigations have revealed that the Drew Tunnel is a drain tunnel for a former mine known as the Massachusetts Hill Mine. The Massachusetts Hill Mine operated between 1850 and 1901. (USGS Excerpt, p. 63) In its early years, the Mine was owned and operated by several different parties, until the North Star Mines Company purchased it in 1894. Shortly thereafter, in 1901, it was closed. There is no evidence that the Mine was ever operated again.

In 1929, Empire Star purchased certain of the assets of North Star Mines Company, including the Massachusetts Hill Mine. A Newmont subsidiary, Newmont Empire Mine Company, owned stock in Empire Star (its interest appears to have ranged between 30-51%, depending on the year). The Newmont Empire Mine Company was dissolved in 1939 and its interest in Empire Star passed to Newmont. In 1957, Empire Star was merged into Newmont, and many of its assets were sold, including the City's west parcel. Limited mineral rights below fifty feet were reserved on the west parcel and those rights are presently held by New Verde Mines LLC, a Newmont subsidiary. However, neither New Verde nor Newmont have ever mined the Massachusetts Hill Mine.

These mineral rights are the basis for the City's assertion that Newmont owns the underground mine workings. However, the City's own expert witness, Donald Olsson, stated in his deposition that "the City owns the top 50 feet total in fee, and they own 50 feet below less the reserved mineral interest." (Olsson Dep. Excerpt) Further, Newmont's expert, Pat Mitchell, a longtime California mining attorney, states the City is the owner of any underground mine workings under its property. (Pat Mitchell Report, enclosed.) See 63C Am. Jur. 2d Property § 12 (Under the accepted maxim of property law, the title to land extends downward from the surface to the center of the earth, and whatever is in a direct line between the surface of any land and the center of the earth belongs to the surface owner.); see also Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co., 171 U.S. 55, 60 (1898) (Although a surface owner may convey his interest in the minerals beneath the surface, nothing changes the general proposition that the owner of the surface owns all beneath).

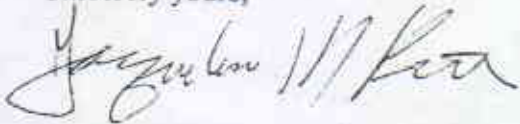
In closing, Newmont is not the owner of the Massachusetts Hill Mine or the Drew Tunnel. Further, Newmont never operated the Massachusetts Hill Mine or the Drew Tunnel. The limited

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mineral rights held by New Verde do not equate to ownership of the underground mine workings. The Drew Tunnel Portal, which is located on the City's WWTP property, is owned and controlled by the City. The City also owns the water emanating from the Drew Tunnel Portal. See Holmes v. Nay, 186 Cal. 231, 236 (1921) (water rights transferred automatically with conveyance of property); Stanislaus Water Co. v. Bachman, 152 Cal. 716, 724 (1908). The City is and should continue to be responsible for management of the Drew Tunnel Portal and drainage.

We appreciate your time and consideration. If you have any questions or would like to meet to discuss these issues further, Newmont welcomes such dialogue.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Jacqueline M. Beckett", written in a cursive style.

Jacqueline M. Beckett
Senior Counsel

Attachments

cc: Frances McChesney, Esq.
Elizabeth Temkin, Esq.